



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CRIMINAL APPEAL NO.200 OF 2017

(Appeal Originating from Nyahururu CM's Court)

Cr.No.1862 of 2017 by: Hon. S.N. Mwangi – SRM)

CLEMENT MAINA NJUGUNA.....APPELLANT

- V E R S U S -

REPUBLIC.....RESPONDENT

R U L I N G

The applicant, **Clement Maina Njuguna** was convicted on his own plea of guilty by Hon. **S.N. Mwangi – SRM** on 1/11/2017 for the offence of breaking into a building and committing a felony contrary to section 306(a) of the PC.

He was sentenced to serve 4 years imprisonment on each limb and the sentences were ordered to run concurrently.

He is dissatisfied with the conviction and sentence and has preferred an appeal against both the conviction and sentence.

Meanwhile, he filed a Notice of Motion dated 8/11/2017 seeking to be admitted to bail pending the hearing of the appeal.

The main ground upon which the application is anchored is that the appeal has high chances of success and that the applicant is sickly. The applicant attached some prescriptions from the Doctor. He relied on the decision in **Mundia v Republic (1986) KLR**.

Mr. Mutembei, learned counsel for the State opposed the application and urged that the appeal does not stand any chances of success; that for the reason given in the affidavit that he is unwell, he can be accorded treatment while in prison.

Unlike an application for bail pending trial which is an applicant's Constitutional right conferred by Article 49 of the Constitution, in such application case, the applicant has already been found guilty and convicted of the offence. There has been a host of authorities in which the courts have said that the primary consideration in such an application is whether the appeal has high chances of success. See **Ademba v Republic (1983) KLR 442**; **Jivraj Shah v Republic (1986) KLR 605** and **Somo v Republic (1972) EA 476**.

In **Dominic Karanja v Republic (1986) KLR 612**. The Court of Appeal laid down the following as pre conditions for grant of bail pending appeal:

- a. The most important issue was that if the appeal had such overwhelming chances of success, there is no justification for depriving the applicant of his liberty and the minor relevant considerations would be whether there were exceptional or unusual circumstances;**
- b. The previous good character of the applicant and the hardships if any facing his family were not exceptional or unusual factors. Ill health per se would also not constitute an exceptional circumstance where there existed medical facilities for prisoners;**
- c. A solemn assertion by an applicant that he will not abscond if released, even if it is supported by sureties, is not sufficient ground for releasing a convicted person on bail pending appeal;**
- d. Upon considering the relevant material in this case, there was no over whelming chance of appeal being successful.**

As held in the above decision, sickness is no good reason to grant such an order because there are medical facilities in the prison and there are many other sick people there. If bond is granted, on the basis of illness, all the convicted persons would be out of prison. In addition, the documents annexed are just prescriptions which do not show that the applicant suffers from a condition that the medical facilities in prison cannot handle.

I have perused the petition of appeal herein and the proceedings recorded when the appellant took plea and I do not agree with the applicant that the appeal has overwhelming chances of success. I will not go into expounding the reasons for reaching that finding.

Having found as above, I decline to grant the orders sought. The proceedings are already typed and the best way to proceed will be by the counsel preparing a record of appeal, having it admitted to hearing and the appeal can be heard and determined at once.

The application dated 8/11/2017 is hereby dismissed.

Dated, Signed and Delivered at NYAHURURU this 15th day of December, 2017.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Mutembei - Prosecution Counsel

Soi - Court Assistant

Appellant – present in person